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Do absentee ballots facilitate fraud?

Lessons from East Chicago — could a statewide election be subverted?

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Nick Ut / AP



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WASHINGTON— If you want a guide to how absentee ballots can be used to subvert an election, the Indiana Supreme Court has one for you.

The court's decision in a case called *Pabey v. Pastrick* makes for instructive reading — especially in light of the fears some Republicans are voicing that Democrats may resort to fraud to win some states on Nov. 4.

The court found that in the 2003 Democratic


primary for mayor of East Chicago, Ind., campaign workers for incumbent Mayor Robert Pastrick:

- pressured and coaxed first-time voters or those who were “less informed or lacking in knowledge of the voting process, the infirm, the poor, and those with limited skills in the English language” to vote by absentee ballot;
- paid voters in cash for casting absentee ballots;
- instructed people applying for absentee ballots to phone the Pastrick campaign when the applicant received his or her

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ballot so that Pastrick supporters could go to their home and "though not authorized by law to do so, 'assist' the

voter in completing the ballot;"

- illegally kept a stockpile of unmarked absentee ballots and delivered ballots to voters;
- lied about whether the person applying for an absentee ballot would in fact be absent on the day of the primary. (Indiana law requires a voter to have a reasonable expectation of being absent from the state or to be ill or caring for an ill person in order to get an absentee ballot.)

Pastrick won 5,228 votes to challenger George Pabey's 4,949 votes.

Judge Steven King, the trial judge in the Pastrick case, found that the 2003 East Chicago mayoral primary "may be a 'textbook' example of the chicanery that can attend the absentee vote cast by mail."

Preying on the naive and the needy

King said Pastrick campaign workers had preyed on "the naïve, the neophytes, the infirm and the needy" by using "unscrupulous election tactics."

And the judge noted how hard it was to prove

that fraudulent absentee voting did in fact tilt the election to Pastrick.

People who had taken part in fraudulent absentee voting were reluctant "to candidly discuss the circumstances surrounding their absentee vote," for fear that they'd "expose themselves to potential criminal liability."

The judge added that Pastrick supporters tried to influence witnesses' testimony, including instructing a witness to "feign a lack of knowledge on the witness stand."

Forty-seven people either pleaded guilty or were convicted of various crimes as a result of the investigation.

Could something similar to the East Chicago case happen statewide in Indiana or other states on Nov. 4?

And is the increasing use of absentee ballots

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adding to the potential for fraud and for a stolen election?

Indiana Secretary of State Todd Rokita, a Republican, said, "if the things described in the Pabey case can happen in good old Indiana you bet it's happening in other parts of the country."

Reforms implemented in Indiana

Rokita said his state had put reforms into effect since the 2003 East Chicago case.

As a companion bill to Indiana photo identification law, (which was later upheld by the Supreme Court), the state legislature also passed a law to make electioneering in the presence of someone with an absentee ballot a crime. He also noted it is a crime for a person to handle an absentee ballot if he is not the voter or the voter's spouse.

Barnard University political science professor Lorraine Minnite, who is writing a book on absentee voting, said, "There could be an advantage in absentee balloting to those who intend to commit fraud, but I also think there are reasonable means available to protect voters against the kinds of predations observed in the Pabey case."

For example, Minnite said, "I don't think partisan groups such as party organizations should be allowed to request absentee ballots for voters, unless authorized by the voter because the voter cannot complete the application process himself or herself (due to something like illiteracy or a disability)."

Minnite suggests another precaution: The list of voters who have requested absentee ballots should not be publicly disclosed. "Knowledge of which voters are voting which ways (in person or absentee) is of most use to partisans who might like to deploy tactics of intimidation or fraud to swing elections," Minnite explained.

She said whether absentee ballots are inherently more vulnerable to fraud "depends on the procedures in place to protect the voter from intimidation or manipulation."

She points to Oregon as an example of an absentee voting system which works well. Oregon phased-in its vote-by-mail system over a number of years.

"The phase-in allowed the state to figure out what kinds of procedures it needed to ensure ballot security, and also allowed voters to become accustomed to the rules," she said.

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As in the East Chicago case, absentee voting often is connected to municipal elections. Some observers doubt that absentee voting can open the door to fraud pervasive enough to affect anything larger than a local election.

Alan Morrison, a special counsel at the Fair Election Legal Network, a group that tries to remove barriers to voting, said the fact that absentee ballot fraud seems to occur most often in mayoral and city council elections “suggests that that kind of tactic will probably work best in primaries and where there are a relatively small number of people who are voting.”

Morrison doubts that what Pastrick’s supporters did in the 2003 East Chicago mayoral primary — only 10,000 people voted — could be done in a larger, statewide race.

Could a conspiracy be kept secret?

“Just think about what it would take to have a really big influence on absentee ballots,” he said. “You really would have to have an enormous number of people participating in this to make it effective, because the numbers are so large on a statewide basis, certainly in the presidential election.”

In the 2004 presidential election, more than 2.4 million people cast votes in Indiana.

Morrison added, “Does this mean that people won’t try to get every edge they can? They will, but the more people you get involved in a program like this, the more likely it is that it will be found out — and therefore will

undermine the goal they’re trying to achieve.”

As for voters being paid to vote one way or the other, as happened in the East Chicago case, “I suppose it happens,” Morrison said. “But I don’t know why it would be more likely to happen at the absentee ballot stage than at the voting stage, except that the payer can look how you voted and be sure that he is getting his money’s worth. I suppose that’s possible.”

Election A to Z

But he said “it’s hard to believe there’s a lot of that going on today, or that it is likely to affect many elections.”

(Morrison’s group, the Fair Election Legal Network, gets part of its funding from the American Federation of State, County, and Municipal Employees, the Service Employees International Union, and the National Education Association. All three of those

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unions support Obama. Its advisory board includes former Clinton White House counsel Abner Mikva, who has been a mentor to Obama since the 1990's, according to National Journal.)

Ultimately, the state legislatures and officials who oversee elections are the defenders of absentee voting integrity.

"If voters want the convenience of absentee balloting, it should be the state's responsibility to figure out a system for ensuring ballot security appropriate to this voting method," Minnite said.

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